

# East Longmeadow Zoning Board of Appeals

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June 3, 2013

Present were: Acting Chair, Alfred Geoffrion; Vice Chair John Garwacki; Clerk, Charles Gray, and Frances Dean. Mark Beglane was not present.

## Appeal Hearing - James LeFebvre, 64 Maple Street

Acting Chair, Alfred Geoffrion opened the public hearing for Jay LeFebvre for 64 Maple Street. Clerk, Charles Gray read the legal notice and correspondence into the record.

Letter from James LeFebvre dated April 22, 2013:

Dear Mr. Florence,

I am in receipt of a cease and desist letter (please see attached) written by the Building Inspector dated April 18, 2013. I am appealing this order to the Zoning Boards of Appeals. Please schedule accordingly.

Additionally, I will be researching my rights to discovery, subpoena of witness, and cross examination, however could you assist me in that endeavor and supply me with the rules and regulations of appeals to the Board of Appeals. Please supply me with the said rules and regulations in writing. Thank you in advance.

Should you have any questions, feel free to call.

Letter from Dan Hellyer, Building Commissioner dated April 18, 2013:

Dear Mr. LeFebvre:

This department has received a complaint that vehicles are being stored on your 64 Maple Street property without Planning Board approval. My investigation revealed that there are 2 enclosed trailers, 1 van, 1 vehicle covered with a blue tarp, 1 stake body truck, 1 large home trailer, 2 flat trailers, 1 pop up camper, 1 track dozer, 1 snow plow blade and 1 boat for sale being stored on this property and the Planning Board has not approved this use.

Section 7.41 of our Zoning By-laws states in part, "It is the intent of this section that no individual, corporation or any business entity, regardless of the form chosen, shall occupy any building structure or premises or change the use thereof or the construction or alteration to the exterior of any structure without complying with the provisions of the Site Plan Review."

You are to immediately cease operating a vehicle storage business at your 64 Maple Street property. Failure to comply with this order will result in the necessary legal action to enforce the by-law.

You have the right to appeal this decision to the Zoning Board of Appeals within 30 days from the date of this order. Please contact me at 525-5400 x1150 should you have any questions.

Acting Chair, Alfred Geoffrion said that the Building Inspector has issued a cease and desist order and asked Mr. LeFebvre to present any evidence to the Board.

Jay LeFebvre said that he has to ask the Board for their guidance on the letter because he met with Attorney Donahue who said that the letter is self evident but he is not sure what he is appealing. He said that he knows he is appealing the letter but he doesn't know if he is appealing the use or if he is appealing the need to go to Site Plan Review or both.

Mr. Geoffrion said probably both, the by-laws provide that any non-residential property that is altered in any way, undergoes a change in use or anything like that has to go through Planning Board Site Plan Review. He said the fact that Mr. LeFebvre took down a building has to go to Site Plan Review, the fact that he is re-grading the property has to go to Site Plan Review. Mr. LeFebvre said that he is arguing the requirement of Site Plan Review not the use.

Mr. Geoffrion said that it's his understanding that the use as a storage facility for vehicles is not one that is allowed in industrial or business zoned areas which his property is zoned. Mr. LeFebvre said then he will start there.

Mr. LeFebvre said that in the zoning book page 3-2, 3.01 - Prohibited Uses, that there are 29 uses and he could go through them but needless to say what he is doing is not listed in those 29 uses. Mr. LeFebvre said if you go the table for industrial uses it says "All industrial uses are permitted except those listed in 3.01. No use shall be permitted which could be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, smoke gas, sewage refuse, noise, excessive vibration or danger of fire or explosion". He said what he is doing does not constitute that so it is an allowed use, in fact it's allowed outright. Mr. LeFebvre said that the Town has changed its story three times, first saying that he needed to go Site Plan Review, then they said that he had an illegal sign and then they said that he didn't have a legal use. He said that now they are saying it is an accessory use under 3.092, Garaging or Parking Commercial Vehicles. He said that commercial vehicles are not defined, it's not a word, it's a phrase and he said that he went to the Registry of Motor Vehicles site to get their definition of a commercial vehicle.

Mr. Geoffrion said that his understanding is that Mr. LeFebvre is proposing storage of vehicles not necessarily commercial, basically all types. Mr. LeFebvre said that was where he was going with it, because if you look at Mr. Hellyer's letter he says that he has a pop up trailer, it's not a vehicle. Mr. Geoffrion said his point is he is not aware of any provision in the by-laws that allows for commercial parking facilities. He said the only thing that deals with parking is as appurtenant use to residential properties. Mr. Geoffrion said that it's his understanding that a Special Permit would be required from the Planning Board in order to conduct that type of business. Mr. LeFebvre said getting back to those 29 uses that are prohibited out right, he said that his use is not one of those. He said that the bylaws then say "all others industrial uses are permitted". He said if that is not an industrial use what it is. Mr. Geoffrion said that it is a commercial parking lot. Mr. LeFebvre asked "that's not an industrial use"? Mr. Geoffrion said that the Board would defer to town counsel but that would not be his opinion. Mr. LeFebvre said that it is not defined anywhere. Mr. Geoffrion said that is why he was saying that he thinks Mr. LeFebvre needs a Special Permit.

Town Counsel, Attorney Donahue, said the use, based on the Building Commissioner's letter, is not an independent use as of right. He said that it's an accessory use to some other use so the parking of vehicles can be industrial, it can be business, it can be some type of commercial use but it's tied to the primary use of the property. Attorney Donahue said the concern that the Building Commissioner had is that there is no use, other than the parking of vehicles, which isn't a permitted independent use. Mr. Geoffrion said which is why he said a commercial parking lot is not permitted and if the Planning Board wished to give a Special Permit for that use it's up to them.

Mr. LeFebvre said that he disagrees because it is an industrial use, it's allowed in the industrial district and there's parking all the time in the industrial use. He said if he was saying that someone has an industrial piece of property and they can't do anything with it unless there is a building on it then they can effectively prohibit allowed uses. Mr. Geoffrion said that he has to have a permitted industrial use and used Hasbro as an example. He said that they have a parking lot, and park commercial vehicles, appurtenant to their operation as a manufacturer. He said someone having just a parking lot is not appurtenant to anything. Mr. LeFebvre said that he doesn't require any of it because he didn't ask for it and said that he is just parking some vehicles there.

Mr. Geoffrion said that it's the opinion of Town Counsel that it is an appurtenant use that is allowed. He said that he doesn't have anything to be appurtenant to, he has land zoned industrial but there is no industry per say. Mr. LeFebvre asked how big a building has to be. Mr. Geoffrion said that he can't give him a legal opinion on that because there is no standard. Mr. LeFebvre said that, in his opinion, it is an allowed use and he is not bothering anybody. Mr. Geoffrion said that he understands but the Board has an opinion from Town Counsel that says it's not an allowed use. Mr. LeFebvre said that Special Permit just came up that day.

Attorney Donahue said that they never discussed Special Permits in the meeting they had with Mr. LeFebvre's and his attorney. Mr. LeFebvre said that was right, he never brought it up.

Mr. Geoffrion said that he brought it up, that is just his opinion and he had not discussed it with Town Counsel prior to the meeting that evening. He said that it is his opinion on what would have to be done in order to have a commercial parking lot in an industrial or business zone. Mr. LeFebvre said that it's not a parking lot and said that he is storing vehicles just like he does at Coyote's Den. He asked if the Board is telling him that when someone has a vacant piece of land, they can't do anything on it unless there is a building.

Attorney Donahue said that is not what is being said, what is being said is if someone has an industrial piece of property, or any piece of property, that they want to put to a new use or a change in use they need to go through the Site Plan Review process. He said nobody is saying that the property can't be used or that it requires a building on it, there just needs to be a declaration by the property owner what use he intends for the property and then submit that plan for approval or review by the Planning Board to see if it conforms.

Mr. LeFebvre asked if he needs Site Plan Review or Special Permit. Mr. Geoffrion said that it is his personal understanding, that with Planning Board approval, he could probably have a storage yard on that property if he had Site Plan approval. Mr. LeFebvre asked Special Permit or Site Plan Review. Mr. Geoffrion said that he raised Special Permit probably incorrectly because there is no defined use as a commercial parking or storage lot in the by-laws. He said if there is nothing defined like that it's his understanding that a Special Permit is required in order to have one. Mr. Geoffrion said let's forget that he ever raised Special Permit because what Town Counsel is saying is that he needs Site Plan Review. He said he believes that if the Planning Board approved the Site Plan then he can run his operation.

Mr. LeFebvre then read the definition of Site Plan Review and said that it comes down to building, structure and premise. He said that premise is a word and when you go back into the definitions it is not defined and when you look in the Merriam Webster dictionary premise is defined as "a track of land with the buildings thereon, a building or part of a building with its appurtenances". He said its building and land together it's not just vacant land and he doesn't think he falls under that definition either.

Mr. Geoffrion said that it was his understanding that there was a structure on the property that was demolished and the property was graded, all without Site Plan Review. Mr. LeFebvre said no structures were demolished as those came down in 2005. He said that they re-graded it to take the lumps out and to make the water stay on the site and they did this to under an acre just so they wouldn't trigger the storm water management requirements. Mr. LeFebvre said he did everything so he wouldn't bother anyone. Mr. Geoffrion said, despite any ones opinion as to the correctness of it, the Planning Board has control over all non-residential uses in town. He said any alteration of any kind under the zoning by-laws has to go through Site Plan Review. Mr. LeFebvre said "so just disregard what's written, so there are written laws and unwritten laws." Mr. Geoffrion said that the Bylaws state that the requirement of Site Plan Review is all inclusive except as to residential district. Mr. LeFebvre said that is not what it says.

Attorney Donahue said if you ask the Building Commissioner he would tell you that in interpreting the word “premises” that it applies to land. He said that East Longmeadow’s by-law talks about building structure and premises so to use “premises” to mean building and structure would be redundant. He said the rules of construction would be that “premises applies to land itself and/or buildings that are on the land. Mr. LeFebvre said if that the way they are interpreting it, rather than what it says, means it was probably written by an attorney. Attorney Donahue said that he didn’t know who wrote it. Mr. LeFebvre said whoever wrote it why didn’t they just say land, why did they say premise, and then refer to Merriam Webster. He said that he is not asking for anything special, he feels he read it and played by rules.

Mr. Geoffrion said that he would like to include in the record, the definition of “premise” provided by Town Counsel as exhibit #1. He said section 7.40 Site Plan Review of the by-laws says “ The Planning Board shall assure that all structures and uses other than a single-family dwelling are developed in a manner which considers community needs, including protection of abutting properties and visual amenities, convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas, adequacy of methods of disposal for wastes and surface water drainage and protection of environmental features on the site and in adjacent areas”. Mr. Geoffrion said despite Mr. LeFebvre’s intended purpose, maintaining proper surface water drainage subjects the proposal to Site Plan Review.

Mr. LeFebvre asked when he reads 7.41, which is specific, how does he interpret it? Mr. Geoffrion said that is talking about not being required for residential development. He said that they are talking about things that are required for Site Plan Review but it is not an exhaustive list of what projects are required to go under Site Plan Review. Mr. Geoffrion said basically the by-law is written and enforced in virtually every change in use of any kind to property that is not residential. He asked Mr. LeFebvre if he has any more evidence he would like to present. Mr. LeFebvre said that his evidence is what the bylaw says and that the Town might not like what it says and they may want to change that. He said that he has been in town since 1987 and running a couple of business in town, it says what it says. Mr. LeFebvre said if they want to interpret then now they are getting into an area that he is not sure that they belong, they get into the meaning what is “is”. He said if the writers of that by-law meant to say land then why didn’t they say it, they said premises and then if you go to Merriam Webster and its land and building. Mr. LeFebvre said that he didn’t make it up and if the dictionary said land or building or land & building he wouldn’t be there. He asked if he has to submit a Site Plan Review what are the standards for a project like that and what will be reviewed. Mr. Geoffrion said that it’s up to the Planning Board.

Attorney Donahue said that he is skirting the first question, the first question is Site Plan Review is going to submit a request to do something with the land. He said that established the zoning setbacks side yard criteria’s for that particular use so until that decision is made by the applicant they will never be able to answer his question. Attorney Donahue said that they have to pick a use that they are going to put on the property and present a plan to the Planning Board for review and consideration.

Mr. Geoffrion addressed that audience for anyone who would like to speak in favor of Mr. LeFebvre's appeal.

Ralph Page, Planning Board Member said when he read it his interpretation of premises was the land. He said that he went back to what a deed would say that if there was no property on it they considered it a premise. He said that was his thought from day one being on the Zoning Review Committee first then the Planning Board and that is what the word premise meant. Mr. Page said as far as the 29 listed Industrial prohibited uses he said at the very top it states that if its not expressly allowed then it's prohibited. Mr. Page said that wasn't supposed to be a list of every possible thing that was prohibited and he believes those were the major items. He said that is what 3.01 at the very top says.

Mr. Geoffrion addressed Mr. LeFebvre for any further evidence on behalf of his appeal.

Mr. LeFebvre said that the Board is making up a definition and he understands they have the right to do that but that's not what the book says. He said that he just read what it say's and it doesn't need to be interpreted because it's black & white.

Mr. Geoffrion asked if anyone wished to speak in opposition to the appeal. There was no response.

Upon motion duly made by Charles Gray and seconded by John Garwacki, the Board voted unanimously (5-0) to close the public hearing. Upon motion duly made by Charles Gray and seconded by John Garwacki, the Board voted unanimously (5-0) to uphold the decision of the Building Inspector/Zoning Enforcement Officer. As grounds therefore:

The Board found that, based on the facts presented, the appellant did not obtain site plan approval from the Planning Board for the alteration of the property and the change in use as required under section 7.4 of the Zoning By-laws, Site Plan.

That the Appellant has not shown, through testimony and/or documentation, relevant information sufficient to overturn the decision of the Building Inspector/Zoning Enforcement Officer.

There being no further business the meeting was adjourned at 6:45 p.m.

For the Board

Charles Gray, Clerk